

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 14168US02)

In the Application of:

Jeyhan Karaoguz

Serial No. 10/658,727

Filed: September 9, 2003

For: SYSTEM AND METHOD FOR
PROVIDING A WIRELESS
ACCESS POINT (WAP) HAVING
MULTIPLE INTEGRATED
TRANSCEIVERS FOR USE IN A
HYBRID WIRED/WIRELESS
NETWORK

Examiner: Jung H. Park

Group Art Unit: 2419

Confirmation No. 2798

Electronically Filed on January 30, 2009

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Appellant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on November 6, 2008 (hereinafter, the Final Office Action) with a period of reply through February 6, 2009. The Appellant also requests review of the arguments stated on page 2 of the Advisory Office Action mailed on January 21, 2009 (hereinafter, the Advisory Office Action). No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS/ARGUMENTS

The present application includes pending claims 1-31, all of which have been rejected. Claims 1-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee (US Pub. No. 2004/0039817), in view of Schmidt (US Pat. No. 7,058,040). The Appellant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

I. Examiner's Response to Arguments in the Final Office Action and the Advisory Office Action

In page 2 of the Advisory Office Action, the Examiner agreed with the Appellant's arguments in the 1/5/09 response to Final Office Action, that Schmidt's multi-mode wireless communicator device 100 is not located within the base station (i.e., the alleged access point). In this regard, it could be concluded that the Examiner would also agree with the Appellant that Schmidt discloses that the multi-mode wireless communicator device 100 is located within a mobile station, such as a cellular phone or a portable computer (see Schmidt at col. 7, lines 26-42).

In a second argument, the Examiner alleges that Schmidt discloses that the multi-mode "wireless communicator device is in the wireless LAN" performing the specific algorithms and applications (i.e., the alleged processor allocation) disclosed by Schmidt at col. 5, lines 56-66. In other words, the Examiner tries to establish an argument that Schmidt's multi-mode wireless communicator device's alleged processor allocation function can be used inside a LAN base station (i.e., the alleged access point). The Examiner relies for support on the above allegation to further allege that Schmidt's multi-mode wireless communicator device's alleged processor allocation function could similarly be implemented in Lee's Access Point, therefore would disclose the limitation of "**allocating a processor within said access point...**," as recited by the Applicant in claim 1.

The Applicant respectfully disagrees and points out that Schmidt **does not** disclose that the multi-mode wireless communicator device 100 is used inside a LAN base station at all. Instead, Schmidt discloses that the **cell phone** core 110 and the short range wireless transceiver core 130 within the multi-mode wireless communicator device 100, **provide support to access to the WAN and the LAN** respectively (see Schmidt at col. 6, lines 28-31). In other words, Schmidt discloses that the multi-mode wireless communicator device 100, with the alleged processor allocation function, is for accessing WAN and LAN communication with the base stations by the mobile station (i.e., a cell phone, a laptop computer). In this regard, the Examiner has not established that Schmidt discloses that the multi-mode wireless communicator device 100 is used inside the LAN base station. Consequently, the Examiner's allegation that Schmidt's

multi-mode wireless communicator device, with the alleged processor allocation function could be implemented inside a LAN base station, or in Lee's AP, is contrary to Schmidt's disclosure.

In a third argument, the Examiner relied on a rationale that the communication between a mobile station and a base station should use the same operating mode, such as 802.11(a), 802.11(b), or 802.11(g), that Lee discloses and the mobile station only searches access points within that mode. The Examiner then concluded that the base station should have a processor for the specific operating mode for the mobile station. The Examiner's argument that "the base station **should have** a processor for the specific operating mode for the mobile station" is contrary to Lee's disclosure. For example, Lee at ¶0023 clearly discloses that there are **three different types** of APs, where **each AP operates in one of the three modes**, i.e., 802.11(a), 802.11(b), or 802.11(g). In this regard, in order for the mobile station to communicate with the APs, the mobile station must operate with a protocol that is compatible to the APs, and not the reverse. Lee simply does not disclose or suggest that the APs would change its protocol operating mode to adapt to the mobile station (i.e., allegedly allocating its processor to operate in a protocol compatible to the mobile station). To substantiate this argument, the Examiner is referred to Lee at Fig. 1, where Lee discloses a flow chart, showing that **it is the mobile station, which determines the AP protocol for compatibility** (i.e., checking all three protocols). Lee clearly discloses that the **APs operate under a fixed protocol without any protocol changes to adapt to the mobile station**. Furthermore, the Appellant points out that Lee does not even disclose the use of a processor in the AP, let alone suggesting allocating a processor inside an access point, as suggested by the Examiner. Therefore, the Applicant maintains that the Examiner's allegation that "the base station should have a processor for the specific operating mode for the mobile station" is contrary to Lee's disclosure.

The Examiner also argues that it is not necessary to show that Schmidt's multi-mode wireless communicator device 100 be used explicitly inside a base station, such as inside Lee's access point. The Examiner further suggests that it is permissible to simply combine Schmidt's wireless communicator device's alleged processor allocation functionality into Lee's AP to disclose the Appellant's claim limitation of "allocating a processor within said access point, said processor compatible with said determined protocol." The Appellant respectfully disagrees refers the Examiner to the rebuttal to the second argument above that, Schmidt does not disclose or suggest that the multi-mode wireless communicator device 100 is used in the base station at all. In fact, the contrary is true, that Schmidt consistently discloses that the multi-mode wireless communicator device 100 is used in only the mobile station.

Even assuming for the sake of argument, that Schmidt's multi-mode wireless communicator device 100 can be used in the base station, the Examiner's argument is still deficient. The Examiner is referred to the Appellant's rebuttal to the third argument above. Namely, **Lee discloses that the AP operates in fixed protocol mode. It is**

the mobile station that determines the protocol. Therefore, the AP has nothing to do with protocol determination. In this regard, Lee still does not disclose or suggest that the APs would perform the claimed limitation of **"allocating a processor within said access point, said processor compatible with said determined protocol,"** because the APs operate in fixed protocol, and there would be no other protocol available for the processor to allocate.

In the fourth argument of the Advisory Action, the Examiner continues to argue that "ordinary person in the art applying a dedicated DSP for specific protocol/function into the access point of Lee. Therefore, ordinary person in the art applying a dedicated digital signal processor (DSP) for specific function/protocol of Schmidt into the access point of Lee in order for the number of active processors to be controlled depending on the application ..." The Examiner is again referred to the Appellant's rebuttal to the third argument above that Lee discloses that the APs operate in fixed protocol. In this regard, the Examiner's argument that "applying a dedicated digital signal processor (DSP) for specific function/protocol of Schmidt into the access point of Lee" is moot.

Therefore, based on the above rationale, the Appellant maintains that the combination of Schmidt and Lee does not disclose or suggest **"allocating a processor within said access point, said processor compatible with said determined protocol,"** as recited in claim 1 by the Appellant, and a prima facie case of obviousness has not been established.

The Appellant submits that claim 1 is, therefore, allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Appellant submits that independent claims 11 and 21 are also allowable at least for the reasons stated above with regard to claim 1.

II. Independent Claims 1 and 13

The Appellant maintains the arguments in the reply to Final Office Action. The Examiner is further referred to the above arguments by the Applicant in the Pre-Appeal Brief, that the combination of Schmidt and Lee does not disclose or suggest **"allocating a processor within said access point, said processor compatible with said determined protocol,"** as recited in claim 1 by the Appellant,

III. Dependent Claims 2-10, 12-20 and 22-31

The Appellant maintains the arguments in the reply to Final Office Action. Claims 2-10, 12-20 and 22-31 depend directly or indirectly from independent claims 1, 11 and 21 respectively, and are, consequently submitted to be allowable.

CONCLUSION

Based on at least the foregoing, the Appellant believes that all claims 1-31 are in condition for allowance. If the Examiner disagrees, the Appellant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: January 30, 2009

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